Diane Killian Allan
1152 W 475 S
Farmington, Utah
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

Diane Killian Allan,

Petitioner

v.

Dane Hanson

Eric Johnsen

Wayne Hansen

David Cole

Troy Rawlings

John Carl Ynchausti

FARMINGTON CITY, a Corporation,

Davis County Attorney's office, a Corporation

and

DAVIS COUNTY JUSTICE COURT, a Corporation dba DAVIS COUNTY DRUG COURT, INC.

Respondents

PETITIONERS RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Cause No: 1:22-CV-00117-DAK-CMR

District Judge Dale A. Kimball
Magistrate Judge Cecilia M. Romero

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By: Diane Hillman Allen

Ezekiel 18:30 "Therefore I will judge you O' House of Israel, everyone according to his ways, sayeth the Lord God. Repent and turn yourselves from all your transgression so iniquity shall not be your ruin".

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Diane Hillman Allen

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner Diane Killian Allan ("Petitioner") files this opposition in response to Respondents Troy Rawlings, David Cole, John Carl Ynchausti, Davis County Attorney's Office and the Davis County Drug Court Inc. (hereinafter collectively "Davis County Respondents") motions to dismiss and motion for judgement. The basis for this opposition is Respondents motion, filed by counsel, is procedurally improper in that the law requires that this dispositive motion 12 (c) is designed to provide a means to dispose of cases when the material facts are not in dispute between the parties. However, as Petitioner will outline in the memorandum below, there are still a number of material facts at dispute in this case.

Additionally, counsel wishes this court to consider material evidence that is outside the four corners of the claim and is not part of the record up to this point. The law requires that summary judgement procedure must be used and that affidavits, depositions, or answers to interrogatories must be used to authenticate such evidence. For this and the reasons listed below the law requires denial of Respondents motion to dismiss.

MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION

INTRODUCTION

Must the inviolate rights belonging to the Sovereign people be strictly guaranteed by and protected by public servants? According to the Constitution for the United States and the Utah Constitution, yes. However, that is not what happened in this case at hand, the very purpose of government is to protect and guarantee the rights of the people. While the Respondents continue to make false claims the fact remains, it is the People that are Sovereign.

The American people are in fact Sovereign, not the government. This is not an issue of whether Respondents assigning a label, an oxy-moron, that they created in an attempt to discredit the

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Petitioner, nor is this a judicial issue, but a political one, the determination of which by the legislative and executive departments of any government conclusively binds the judges as well as the all the other officers, citizens and subjects of that government. "Sovereignty itself is, of course, not subject to law for it is the author and source of law...While sovereign powers are delegated to…the government, sovereignty itself remains with the people.[1] "…at the revolution, the sovereignty devolved on the people; and they are truly the sovereign of the country, but they are sovereigns without subjects... with none to govern but themselves the Citizens of America are equal as fellow Citizens, and as joint tenants in the sovereignty".[2] This principle has always been upheld by the court and affirmed under a great variety of circumstances.[3] Public officials, that owe a duty to the public, and the men and women they serve, are overstepping the very duties and Oaths that bind them and usurping power for themselves and generating revenue for their employers. Yet Respondents would have this court believe that the Petitioners' inviolate rights were guaranteed to her throughout the entire state court proceedings. However, the complaint tells a different story. One of how the Petitioners' rights were thrown to the side of the road like yesterday's newspaper, and individuals who are supposed to be public servants, usurping the power granted to them by We The People.

Congress knew all too well how Citizens were being subjected to treatment that blatantly violated their constitutionally secured rights under the color of state law which is why they enacted title 42 U.S.C. § 1983. This law is meant to deter state actors from violating the people's rights under the color of law, which, unfortunately, continues to happen today. It might not happen in the same way as it did when Congress passed this legislation, but it takes on an even more egregious

[1] Yick Wo v Hopkins, 118 U.S. 356
[2] Chisholm v. Georgia (US) 2 Dall 419, 454, 1 L.Ed 440, 455 @Dall 1793 pp 471-472.
[3] Gelston v Hoyt, 3 Wheat. 246, 324; U.S. v Palmer, Id 610; The Divina Pastora, 4 Wheat 42; Foster v Neilson, 2 Pet. 253, 307, 309; Keene v McDonough, 8 Pet. 308; Garcia v Lee, 12 Pet. 511, 520; Williams v Insurance Co, 13 Pet. 415; U.S. v Yorba, 1 Wall 412, 423, U.S. Lynde, 11 Wall 632, 638,

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appearance: having the appearance of lawful court action, when in reality the court lacks jurisdiction to even have one of the sovereign people in it at all. All of this is done in an article I tribunal, under the administrative procedures act, rather than according to the constitutional provisions that each court MUST adhere to and the officers of said court are required to follow. This case is at the very core of this issue: can one of the sovereign people be tried and convicted, in an administrative court, while their constitutionally secured rights are ignored? "In the United States, sovereignty resides in the people… the Congress cannot invoke the sovereign power of the People to override their will as thus declared".[4] According to the Supreme Court "the state Citizen is immune from any and all government attacks and procedure, absent contract". [5]

All of Respondents arguments ignore two legal aspects: first, the Farmington City Respondents lacked jurisdiction over the Petitioner to issue her a citation to begin with. Additionally, the Davis County Defendants lacked subject-matter jurisdiction over Petitioner when they failed to prove up jurisdiction after it was properly challenged by Petitioner in the state court[6]; and second, when the Davis County Defendants failed to prove up jurisdiction by responding to Petitioners' jurisdictional challenges in writing before the hearing, they agreed with Petitioners' arguments pursuant to Ut.R.Civ.P. 8(d) - Effect of failure to deny. This means that the that state court was never given jurisdiction and that the state actors acted outside of their scope and authority, to which prosecutorial, qualified and judicial immunity is not an affirmative defense.

Administrative courts are nothing more than corporations suable for their unconstitutional practices. "You can sue any corporation for the unconstitutional polices, patterns and practices".

[4] See Perry vs US 294 US 330 (1935)
[5] See Dred Scott v. Sanford, 60 U.S. (19 How.) 393
[6] Basso v Utah Power and Light Co. 495 F 2d 906, 910

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"Our holding today that local governments can be sued under 1983 necessarily decides that local government officials sued in their official capacities are persons under § 1983 in those cases in which as here a local government would be suable in its own name"[7] Political subdivisions of the executive branch exert control over people not expressly contracted with or employed by them.[8] With this in mind, the law compels denial of Respondents' motion to dismiss.

2.1 MOTION TO DISMISS STANDARD

Defendants have many impediments to dismissal in this case of extraordinary public importance given the precedent it would set. They must show that no facts exist, whether alleged, possibly alleged in an amendment, or discoverable, that provide a basis for either a declaratory judgment, injunctive relief, or title 42 § 1983 cause of action. "When considering a defendant's motion to dismiss, a court must construe the factual allegations in the complaint in the light most favorable to the Petitioner."[9] "If the complaint provides fair notice of the claim and the factual allegations are sufficient to show that the right to relief is plausible, a court should deny the defendant's motion."[10] "A claim will not be dismissed on a Rule 12(b)(6) motion unless it appears to a certainty that no relief can be granted under any set of facts provable in support of its allegations".[11] Further a 12 (c) motion is barred as under Rule 57 this is governed by rule 38 and 39 as a Trial by Jury has been demanded thus may not be dismissed. In trying to meet that standard, Respondents cannot rely on materials outside the four corners of the pleadings as the

[7] See Monell v Department of Social Services 436 U.S. 658 (1978).
[8] Petitioner hereby adopts and incorporates by reference the response presented in opposition to Farmington City Respondents.
[9] *See Barker v. Riverside Cnty. Off. of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009); see *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555– 56 (2007).
[10] See *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009); *Twombly*, 550 U.S. at 555–56; *Woods v. City of Greensboro*, 855 F.3d 639, 652–53 & n.9 (4th Cir. 2017); *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009).
[11] *See Lowe v. Hearst Commc'ns, Inc.*, 414 F. Supp. 2d 669 (W.D. Tex. 2006), *aff'd*, 487 F.3d 246, fn. 1 (5th Cir. 2007).

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courts have held that "when ruling on a Rule 12(b)(6) motion, the district court must examine only the Petitioner 's complaint." [12] As a result, a court "must determine if the complaint alone is sufficient to state a claim; the district court cannot review matters outside of the complaint." *Id.*[12] Critically, at all times at this pleading stage of the case, all inferences, assumptions and facts, including what amendments could provide and what discovery could show, must be accepted as true against the Respondents.

In a title 42 § 1983 suit, Petitioner is required to show that "(1) the respondent(s) may have personally participated in the deprivation; (2) the [respondent who are a] supervisory official, after learning of a violation, may have failed to remedy the wrong; (3) the [respondent who are a] supervisory official may be liable because he or she created a policy or custom under which unconstitutional practices occur or allowed such a policy or custom to continue; or (4) the [respondent who are a] supervisory official may be personally liable if he is grossly negligent in managing subordinates who caused the unlawful condition or event.[13] Petitioner easily satisfies this burden here. Petitioner will address all of Respondents arguments by proving she pled with particularity that each Respondents violated, or caused to be violated, Petitioner's inviolate rights secured by the Constitutions. For the reasons that follow and the legal standard required for such motions as above articulated, the respondent utterly fail their burden to compel this court to dismiss Petitioner's claim.

Further, there are conclusory statements made by counsels in their arguments, that are purported as fact but are outside the record, and they failed to support those statements with verified

[12] *Jackson v. Integra Inc.*, 952 F.2d 1260, 1261 (10th Cir. 1991). (citing *Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991)) Citing *Keller v. Arrieta* (D.N.M., Jan. 15, 2021).

[13] *Williams v. Smith,*781 F.2d 319, 323-24 (2d Cir. 1986). Citing *Croft v. Harder* (D. Kan. 1989) 730 F. Supp. 342, 353

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affidavits, depositions, or answers to interrogatories from their clients. As the courts have said many times, statements of counsel are not facts or evidence before the court and counsel cannot testify as such.[14] However, it is well settled law that counsel for clients are barred from testifying for two reasons: (1) they must have personal knowledge of the situation (2) statements of counsel are not evidence and are insufficient for purposes of granting a motion for summary conclusion. The courts have held that motions filed under rule 12(b)(6) that allege facts that are outside of the record are treated like motions for summary judgment under Fed.R.Civ.P. 56(c) and MUST be supported by affidavits and/or depositions taken under oath. As of this writing of this brief, the Respondents have filed no affidavits nor affidavits to counter the claims made by Petitioner. "Statements of counsel in their briefs or agreement are not sufficient for purposes of granting motion to dismiss or summary judgment." [15]

2.2 SUMMARY OF ARGUMENT

The conduct complained of is egregious and is conduct of tyrants, not public servants, definitely not government by the people, of the people and for the people. Political subdivisions of the executive branch cannot control the People simply by giving demands that are not expressly enumerated by the constitutions. According to the Supreme Court, there is no "heightened pleading rule [that] requires plaintiffs seeking damages for violations to invoke §1983 expressly in order to state a claim…" a federal court may not apply a standard "more stringent than the usual pleading requirements of Rule 8(a) in "civil rights cases alleging municipal liability".[16] This Court has knowledge that Petitioners procedural due process rights require the opportunity to present evidence in support of her claims.

[14] See *United States v. Baca* (D.N.M. 2019) 409 F. Supp. 3d 1169, *U.S. v. Erickson* (10th Cir. 2009) 561 F.3d 1150, and *Arnold v. Riddell, Inc.* (D. Kan. 1995) 882 F. Supp. 979

[15] Trinsey v Pagliaro, 229 F. Supp 647

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2.3 MEMORANDUM OF LAW

Council for Respondents throughout the opposition brief relied on unpublished case law as it relates to their defenses. It should be noted that these unpublished cases cited by council are not controlling caselaw and cannot be used to set a precedent and are not binding on this court pursuant to DUCiv.R. 7-2(a)(1)(2). This very court has ruled along these lines: "petitioner correctly asserts that none of these cases are binding on this court" See DUCiv.R. 7-2(a). Additionally, council failed to provide copies of these opinions with the motion to dismiss as is required under this local rule. Petitioner is not a member of the B.A.R. and does not have access to these case opinions pursuant to DUCiv.R .7-2(c), copies must be furnished if the opinions are not in publicly available databases. Therefore, since council failed to adhere to written rules, and failed to substantiate their claims made with verifiable evidentiary proof, this can only be interpreted that this filing was made to needlessly delay this litigation and incur additional court costs all of which are sanctionable under Fed.R.Civ.P.11.

3.1 UTAH GOVERNMENTAL IMMUNITY ACT (UGIA)

Davis County Respondents UGIA claims fail. "To say that one may not defend his own property is usurpation of power by legislature."[17] The Supreme Court identified a state is not a "person" under title 42 § 1983, but a municipality is and similarly, a state official acting in his official capacity is not a "person", but they are if they are sued in their individual capacity as is the case here.[18] Their claims of immunity come from Utah Statutes which do not apply here and are inferior to the Constitutions. "The eleventh amendment affords no protection to local government

[16] Swierkiewicz v. Sorema N, A. 534 U.S 506, 512, 122 S.Ct. 992, 152 L.Ed.2d I (2002) Quoting Johnson v City of Shelby (2014) .
[17] O'Connell v Judnich (1925) 71 C.A. 386, 234 P 664.
[18] See Will v Michigan Dept of State Police (1989) 491 U.S. 58

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entities and employees," nor does it bar such suits, nor are state officers absolutely immune from personal liability under § 1983 solely by virtue of the "official" nature of their acts." [19]

Regardless, we see that pursuant to U.C.A. 63G-7-301 Waivers of Immunity (1)(a) immunity from suit of each governmental entity is waived as to any contractual obligation. Actions arising out of contractual rights or obligations are not subject to the requirements of 63G-7-401. Under (d) any action brought under the authority of Utah Constitution, Article 1, Section 22, Private property shall not be taken or damaged for public use. "Life, liberty and property are the three great subdivisions of all civil rights… the right to work engage in gainful occupation, and receive compensation therefore are property rights, and "property" embraces all valuable interests which a man possesses outside of himself, his life, and his liberty, and is not confined to mere tangible property, but extends to every specie of vested right".[20] Immunity fosters neglect and breeds irresponsibility, while liability promotes care and caution, which caution and care is owed by the government to its people".[21]

The Supreme Court held in Felder v Casey, that state notice-of-claim rules may not be applied to § 1983 claims, and 63G -7-301(1)(b) expressly states actions arising out of contractual rights or obligations are not subject to the requirements. Additionally, the Court found state notice-of-claim requirement incompatible with the Patsy rule that a § 1983 plaintiff is not required to exhaust state remedies.

The court's practice is to first look to the elements of the most analogous tort when §1983 was enacted, so long as doing so is consistent with "the values and purposes of the constitutional

[19] See Hafer v Melo; 502 U.S. 21 (1991)
[20] McGrew v UT, 85 P2d 608.
[21] See Rabon v. Rowen Memorial Hospital, Inc. 269 N.S, 1., 13, 152 SE 1d 485, 493

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right at issue."[22] The tort-law did not require a plaintiff in a malicious prosecution suit to show that his prosecution ended with an affirmative indication of innocence" and doing so is consistent with "the values and purposes" of the fourth amendment.[23] Concerning whether a criminal defendant was wrongly charged, or whether an individual may seek redress for wrongful prosecution, cannot reasonably depend on whether prosecution ended without conviction.

3 Judicial Immunity

Pursuant to the Constitution Article VI "...and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary not withstanding", thus judicial immunity does not exist. Respondent Ynchuast acted outside of any jurisdiction and what the law commanded him to do. A judge has no discretion of properly applying the law to the facts. Walker v Packer. See Walker v Packer 35 Tex.Sup.Ct.J. 468,827 S.W.2d 833 "When enforcing mere statutes, judges of all courts do not act judicially and thus are not protected by "qualified" or "limited immunity".[24] Thus, "a judge loses absolute immunity when [the judge] acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature".[25] "We [judges] have no more right to decline the jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."[26] Officials and judges are deemed to know the law and sworn to uphold the law; officials and judges cannot claim to act in good faith in willful deprivation of the law they certainly cannot plead ignorance of the law.

[22] *See Manuel* v. *Joliet*, 580 U. S. 357, 370.
[23] See Thompson v Clark 142 S.Ct. 1332(2022) citing *Manuel*, 580 U. S., at 370
[24] See Owen v City 445 U.S. 662; US. v. Throckmorton, 98 US 61, Maine v. Thibidout, 100 S.Ct. 2502
[25] See Mireles v Waco, 502 U.S. 9, 10 n.1 (1991); *Forrester,* 484 U.S. at 229-30, 108 S.Ct. 538; Schucker v Rockwoood, 846 F 2d 1202, 1204 (9th cir, 1988); *Forrester,* 792 F.2d at 660
[26] *Johnson v. Turner,*125 F.3d 324, 333 (6th Cir. 1997) (citing *Mireles v. Waco,*502 U.S. 9, 13, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991)).

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Canonum De Ius Positivum: Canon 2288 When any official person, executor or trustee acts in a deliberately deceptive and dishonorable manner in order to compel a man or woman to act as surety for a person, any ordinances, orders or punishments are automatically unlawful, having no validity or effect. An official charged with unlawful orders or punishments may not claim any form of immunity. **Canon 3197** A judge or magistrate that uses threat as a means of coercion removes both their authority to hear the matter and immunity from personal liability.

Again, due to willful indifference to Petitioner's rights, Respondent Ynchausti violated the very sacred constitutions he took an oath to uphold and protect and violated Petitioners rights by denying her the right to freedom of religion, right to face her accusers, right to lawful counsel and trial by jury, and to be secure in person, papers and effects. In doing so, he caused damages to Petitioners life, liberty, property and pursuit of happiness and is therefore liable in his personal capacity to the Petitioner under 42 § 1983.

3.1 PROSECUTORIAL IMMUNITY

Given the fact the prosecutors are acting as debt collectors and are making false and misleading statements pursuant to 15 USC 1692 (e) **(3)** their actions can hardly be considered "intimately associated with the judicial process". Upon further examination we see that they are taking legal actions in violation of 15 USC 1692i (b). These debt collectors who are acting as attorneys are in violation as these actions were brought in an administrative court not a judicial district. Further, they would like to have this court believe that some crime was committed, yet, as has been shown previously in People v Battle "traffic infractions are not crimes" as they are attempting to assert. At no point in this simulation of a legal process has either Respondents Cole or Rawlings acted in any way to promote "advocacy". There was never a waiver of rights, nor consent to their supposed "advocacy". Respondents upon the e-filing of the unsigned, unverified citation became very involved in the initiation and presentation to the court representing Farmington City as "Farmington City Prosecutors" and provided false and misleading information and did not have any advocate role during this sham proceeding.

Without prejudice, UCC 1-308 (old UCC 1-207.4) this man reserves all this man's rights not to be compelled to perform under any commercial contract or agreement that this man did not enter knowingly, voluntarily, and intentionally. This man did not and does not accept the liability of any compelled benefits offered or any unrevealed, non-disclosed commercial contract or agreement offered. All offers accepted pursuant to 40 STAT 411, Section 7 (e) and 50 US code §4305 (B)(2). This is a legal permanent fixture and part of every page of this TORT CLAIM PETITIION in this court of record in exclusive common law of England that shall be read and considered in every COURT pursuant to all laws NON-ASSUMPTIVE, without recourse, UCC 1-103.6.

By: Diane Wellman Allen

Ezekiel 18:30 "Therefore I will judge you O' House of Israel, everyone according to his ways, sayeth the Lord God. Repent and turn yourselves from all your transgression so iniquity shall not be your ruin".

Jose 4:6 "My people are destroyed for lack of knowledge because thou hast rejected knowledge, I will also reject thee, that thou shalt be no priest to me: seeing thou hast forgotten the law of thy God I will also forget thy children.

Mathew 25:15 "for the Kingdom of heaven is as a man traveling into a far country, who called his own servants, and delivered unto them his goods".

Further, we see that prosecutors abandon traditional advocacy roles to participate pretrial in police investigative work in law enforcement administration on a day-to-day.[27] Thus as Rawlings and Cole prosecutors job should not be to represent one party, it's interest therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. "As such he is in a peculiar and very definitive sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocent suffer... he is not at liberty to strike foul ones"[28] Any attempt or interpretation that immunity should be granted to officials who have sworn an oath to the constitution can only result in the denial of justice which is squarely in opposition to the intent of congress when the passed the 42 § 1983 legislation. Thus, prosecutorial and qualified immunity defenses do not apply in this case.

3.2 QUALIFIED IMMUNITY

Astonishingly, The Davis County Respondents are claiming Qualified Immunity, knowing that they have violated the Constitutional rights belonging to the Petitioner. "Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct **does not** violate clearly established statutory or Constitutional Rights of which a reasonable person would have known.[29] "Qualified immunity shields federal and state officials from money damages **unless** a Petitioner pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the Constitutional rights when he denied her right to assistance of counsel and due process rights. Ynchausti showed a "deliberate indifference" to the Petitioners rights after a clerk identified to challenged conduct."[30] Respondents directly violated Petitioners 5th,6th and 7th amendment

[27] Buckley v. Fitzsimmons, 113 S.Ct. 2606 (1993)
[28] See Mireles v Waco, 502 U.S. 9, 10 n.1 (1991) Berger v United States, 295 US 78 (1935).
[29] Harlow v Fitzgerald, 457 S. 800
[30] *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citations omitted)

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By: Diane Kelleher Allen

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Petitioner as a "Constitutionalist" to the judge, therefore, there was no way for Petitioner to receive fairness or reasonableness as she had been singled out and discriminated against. The first test in which this court is to apply is that 1. The Davis county Respondents violated Petitioners' Constitutional rights. See ECF No. 1 ¶¶ 67 – 106, 163-172, 179-18. And 2. Petitioners Constitutionally protected rights were clearly established as of December 15, 1791. "His rights are such as existed by the Law of the Land long antecedent to the organization of the State, See Hale v. Henkel 201 U.S. 43 at 89. Petitioner has met this requirement as she has plead that both Statutory and Constitutional rights were violated.

Counsels' assertion that the legal theory must be specific is unsupported as The Supreme Court held that Petitioners complaint "stated simply, concisely, and directly events that, they alleged, entitled them to damages from the city. Having informed the city of the factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim." Id at 347 (emphasis added). Further the Supreme Court held that when a complaint contains sufficient "factual allegations" a court should not grant a motion to dismiss "for imperfect statement of the legal theory supporting the claim asserted,"[31] Failure to follow clearly defined statutes and Supreme Court rulings cannot be excused. "State courts must follow the interpretations of the federal constitution made the United States Supreme Court."[32] Reasonableness is the spirit of the law, if they didn't follow the law their actions weren't reasonable. "Where stops the reason, there stops the rule", Karl Llewellyn, The Bramble Bush. Counsel claims they cannot lose immunity because their conduct violates some state statute, department policy, or administrative provision. However, counsel is grossly attempting to

[31] See Id at 346 (emphasis original) Groden v City of Dallas Texas, 826 F.3d 280 (5th Cir. 2016) 158 (7th printing 1981).

[32] State v Laviollette, 118 Wn.2d 670, 826 P.2d 6844 [no. 58076-6. En Banc. March 19, 1992]

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By: Diane Kellen-Allen

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misdirect this court as Respondents violated clearly established Congressional Statutes and constitutional rights.

The courts paramount duty in statutory matters is to fulfill the intent of the Legislature, a duty that derives from the separation of powers doctrine. Only on the grounds of unconstitutionality, may the judiciary openly ignore the legislative judgement, abstention, Separation of Power and the limits of the Judicial Function, 94 Yale L.J. 71, 76 (1984) "When a state forms a constitution which is approved by Congress it is estopped to deny its validity. The action of Congress cannot be inquired into, for the judicial is bound to follow the action of the political department".[33]

Counsels claims that Rawlings was not involved is patently false. Davis County Justice Court identified him as the sole prosecutor in this case initially, then later when he attended the pre-trial conference further shows his direct involvement, thus he is not entitled to immunity.

3.3 Collateral Estoppel/Res Judicata

The matter that Respondents try to bring is outside the four corners of this pleading and may not be considered by this court. Further the justice court was constrained thus rendering the judgement void as they lacked jurisdiction from the start to so called finish. This was nothing more than a simulation of a legal process under color of law in an administrative setting. Under federal law, which is applicable to all states, the US Supreme Court stated that if a court is "without authority, its judgments and orders are rendered as nullities, they're not voidable, but simply void; and form no bar to recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or

[33] White v. Hart 39Ga.; 306 Powell v. Boone 43 Ala. 459; Luther v Borden et al 48 U.S. 1

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By: Diane William Allen

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sentences are considered in law as trespassers..." [34] Even if a court (judge) appears to have subject matter jurisdiction, subject matter jurisdiction can be lost for violations of due process.[35]

Davis County Defendants' third statement that Petitioner has made Federal and State Claims and requested an Emergency Injunction wherein Petitioner has now been convicted fail as well for two reasons: first, this collateral attack is based on attacking a state court conviction AFTER the conviction took place. Second, this doctrine assumes that the state court had the proper jurisdiction to adjudicate the matter in the first place. This defense fails as well.

Petitioner, after having seen that she was going to get no remedy in the state court filed a request for decision from this court on September 9, 2022 [ECF No. 1] giving cause for the Petitioner seeking injunctive relief. Therefore, according to legal precedent, "the Court here [can]not include or consider any facts asserted by Defendants which were not plead in the complaint (or which occurred after the complaint was filed)"[36] This rendered any conviction in the justice court as having no legal effect.[37]

3.4 State Court Lacked Proper Jurisdiction The second reason Davis County Respondents' claims under impermissible collateral attack fails is the state court lacked proper jurisdiction to hear this matter as Petitioner timely raised an objection to subject matter jurisdiction when she filed her

[34] Elliott v. Piersol, 1 Pet 328, 340

[35] See Johnson v Zerbst, 304 U.S. 458, 58 S.Ct. 1019; See Hafer v Melo; 502 U.S. 21 (1991) See US v Lopez and Hagan v Levine; Rosensiel v Rosenstiel, 278 F. Supp., 794; See Hays v. Louisiana Dock Co., 4452 N.E. 2d 1383; Klugh v U.S. 620 F.Supp, 892(D.S.C. 1985); Allcock v. Allcock, 437 N.E. 2d 392 (Ill. App 3 Dist. 1982); Transamerica Ins. Co. v South 975 F. 2d 321, 325-26, United States v. Daniels, 902 F.2d 1238, 1240; king v Ionization Int'l, Inc. 825 F.2d 1180, 1188 and Central Laborer's Pension and Annuity Funds v Griffee, 198 F.3d, 642, 644 20 See Re Application of Wyatt, 300 P 132; Re Cavitt, 118 P2d 846

[36] City of Pontiac Police & Fire Ret. Sys. v. Jamison (M.D. Tenn., Mar. 24, 2022) See also Russell v. County of Nassau 696 F. Supp. 2d 213 (E.D.N.Y. 2010), Rhoades v. Jim Dandy Co. 107 F.R.D. 26 (N.D. Ala. 1985)

[37] Marbury v. Madison, 5th US (2 Cranch) 137, 180

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challenges by motion into the court docket, listed here [exhibit 3 & 5, ECF no. 1]. Petitioners motion to dismiss was properly filed according to the Ut.R.Civ.P. and Ut.R.Cr.P. and went unopposed by the prosecuting attorneys. By rule,[38] the prosecutors agreed with Petitioner's notice to dismiss by their failure to oppose it in writing before the court hearing which rendered any proceeding in the state justice court moot. However, Respondent Ynchausti took it upon himself to deny Petitioner's motion challenging jurisdiction and proceeded to move forward with the proceedings anyway. The law compelled the dismissal of the case then, however, Ynchausti erred egregiously in that it is not proper procedure for him to rule on that motion, but rather it is upon the moving party, the prosecuting authority, to prove up jurisdiction, which they did not do. This therefore, deprived the state court of any jurisdiction it had which rendered any judgment issued as a void judgement.[39]

State court lacked jurisdiction from the start as "In as much as every government is an artificial person, an abstraction, and a creature of the MIND ONLY with other artificial person. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that NO government, as well any law agency, aspect, court, etc., can concern itself with anything other than Corporate, Artificial Persons and the Contracts between them."[40] (emphasis added). This therefore, deprived the

3.6 STATE LAW CLAIMS

The Supreme Court held in Felder v Casey, [46] that state notice-of-claim rules may not be

[38] *See Ut. R. Civ. P. 8(d) -effect of failure to deny*

[39] See Hagens v Levine 415 U.S. 533 *Lorenzen v. United States* 236 F.R.D. 553 (D. Wyo. 2006), *Kegler v. U.S. Dept. of Justice* 436 F. Supp. 2d 1204 (D. Wyo. 2006), and *John II Estate v. Brown* 201 F. 224 (9th Cir. 1912) US v Will, 449 US 200, 216, 101 S Ct 471 66 LE 2nd 392, 406 (1980)

[40] S.C.R. 1795, Penhallow, v Doanes Administrators 3 U.S. 54; 1 L. Ed 57; 3 Dall. 54, Supreme Court of the United States 1795 [Not the United Stated Supreme Court" – ed.] US v Minker 350 US 179, 187

state court of any jurisdiction which rendered any judgement issued as a void judgement.[41]

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By: Diane Hellen Allen

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applied to 42 § 1983 claims. Additionally, the Court found that state notice-of-claim rules unduly burden and discriminate against civil rights claimants and impose an exhaustion requirement incompatible with the Patsy [47] rule that a § 1983 plaintiff is not required to exhaust state remedies.

3.7 Anti-Injunction Act

Pursuant to 15 USC 1692i**(b)** Congress says the justice court was estopped from hearing the matter that gave rise to this claim. This is further supported by Proclamation 2039 and 40 Stat. 411 page 418 (e). By and through an act of Congress the Respondents were estopped from hearing the original matter in the first instance and instead of doing what Congress commanded them to do they usurped power for their own financial gain in violation of Petitioners Constitutional protections. Whereas Title 42 § 1983 "is an exception to the Anti-Injunction act, however, if the requested relief is required in order to avoid irreparable injury, and it is clear that under no circumstances could the government ultimately prevail."[42]

Further, because the Anti-Injunction Act is not expressly applicable to declaratory judgments,[43] it should more properly be said that such a result is justified through an extension by analogy to declaratory judgments in situations where the underlying policy against unseemly interference with proper state litigation is applicable. [44] Thus the unavailability of injunctive relief under the Anti-Injunction Act should not inevitably lead to a denial of declaratory relief.[45] Further, if a

[41] *See Scheuer v Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974)*
[42] S.E.C. v. Credit Bancorp., Ltd., 297 F.3d 127 (2d Cir. 2002).
[43] Puerto Rico Intern. Airlines, Inc. v. Silva Recio, 520 F.2d 1342 (1st Cir. 1975); McLucas v. Palmer, 427 F.2d 239 (2d Cir. 1970); Hall v. Crosland, 311 F. Supp. 106 (M.D. Ala. 1970).
[44] Thiokol Chemical Corp. v. Burlington Industries, Inc., 448 F.2d 1328 (3d Cir. 1971).
[45] Garrett v. Hoffman, 441 F. Supp. 1151 (E.D. Pa. 1977).

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By: Diane Killian-Allen

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state suit is likely to turn on a question of federal law with which the federal court is more familiar and experienced and if the state court does not proceed in the normal course to adjudicate the matter, it is neither necessary nor desirable to construe the Anti-Injunction Act as precluding a declaratory judgment on the common federal question.

3.8 Younger Doctrine

Citing Younger at 45 "In general, three conditions must be met. 1. There are state proceedings that are currently pending; 2. Involve an important state interest; and 3. Will provide the federal [petitioner] with an adequate opportunity to raise his or her constitutional claims". The Respondents fail all three barriers. First there is no current proceeding before the state court and the past proceeding was not properly before the court, thus, proceedings are void ab initio; 2. There is no important state interest here, merely a private for-profit corporation masquerading as government acting under color-of law; 3. The state court has intentionally denied and rejected all of Petitioner Constitutional protected claims and denied her right to due-process and redress of grievances. As such the Younger Doctrine fails. This is further supported in 28 USC §1443. The state court was never an adequate place to get relief for violations of Federal Statutes and Federal questions given the irreparable harm these actors caused and the magnitude of their conspiratorial acts and the fact that the state courts don't have jurisdiction to hear these matters.

3.9 ROOKER-FELDMAN DOCTRINE

The Respondents mistakenly imply that this cause is intended to appeal a state court judgement. This cause was brought for vindication of Constitutionally protected rights. The state court acted outside any jurisdiction and any judgment rendered is void ab-initio. Thus, the Rooker-Feldman doctrine is not applicable in any instance in this cause.

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4 PLEADING REQUIREMENT

At this pleading stage, before discovery, Defendants must cross four successive barriers to dismissal: first, that the facts, assumed to be true at this stage as alleged, cannot possibly constitute a legally cognizable claim; second, that all reasoned inferences from the facts alleged cannot possibly constitute a legally cognizable claim; third, that no set of facts that could be alleged in an amended complaint could possibly constitute a legally cognizable claim; and fourth, that no set of facts that could be discovered in the suit could possibly constitute a legally cognizable claim. Defendants fail each of these when they need to overcome all four.

This is neither about isolated instances of deprivations of rights under the color of state law nor whether each violation by itself would warrant its own separate cause of action. It is about the totality of violations and the utter and reckless disregard for even the most fundamental rights belonging to the Petitioner. As the evidence mounts, the logical inquiry is whether the Respondents willfully acted in complete disregard of the rights belonging to Petitioner, or if they merely failed to exercise objective reasonableness in knowing that their actions would deny Petitioner her God-given rights. The law provides for a remedy in either situation.

At this point, the only question that must be addressed is: did the Petitioner allege sufficient facts, or could she amend to allege such facts upon discovery, that a jury would find that the Defendants did with wanton disregard to the rights belonging to Plaintiff seek to convict her in an administrative court that lacked proper jurisdiction? The answer is yes.

Title 42 U.S.C. § 1983 imposes civil liability where a defendant knowingly "subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, [who

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then] shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..." Finally, since the Plaintiff is proceeding propria persona, the courts have held that pro se pleadings are to be held to a much less stringent standard, however in-artfully plead and that pro se litigants are entitled to present evidence in support of their claims.[46]

4.1 NON JURAL ENTITIES

The very notion that the Davis County Attorneys office and the Davis County Justice Court claim to be "not persons subject to suit" is meant to mislead this court. "Governments descend to the level of mere private corporations, and take on the characteristics of a mere private citizen…where private commercial paper [Federal Reserve Notes] and securities [checks] is concerned… For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government".[47] Under § 1983, a local governing body, can be sued where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers. "You can sue any corporation for the unconstitutional polices, patterns and practices".[48] The very notion that rouge actors, acting outside of what the law allows them to do are entitled to immunity from suit is repugnant to the Constitution the Supreme Law of the land and therefore of no force and effect. Declaration of Independence, Clause 15 "he has combined with others subject us to a jurisdiction foreign to our constitution, unacknowledged by our laws; giving his ascent to their acts of pretended legislation.

[46] See *Haines v. Kerner* (1972) 404 U.S. 519
[47] Clearfield Trust Co v. United States 318 U.S. 363-371 (1942) See also U.S. v Burr, 309 U.S. 242; 22 U.S.C.A. 286e, Bank of U.S. vs Planters Bank of Georgia, 6L, Ed. (9 Wheat) 244; 22 U.S.C.A. 286 et seq., C.R.S.
[48] Monell v Department of Social Services 436 U.S. 658 (1978).

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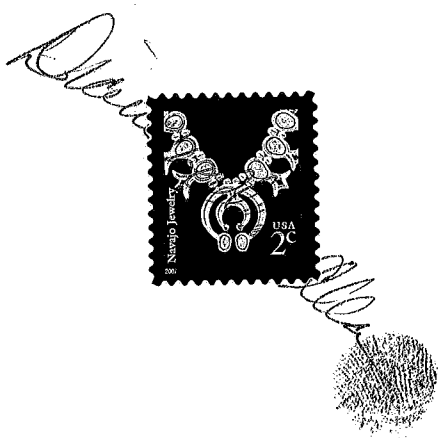

Respondents must either be misinterpreting or misreading the pleading to think that these claim do not apply to them.

First – Fourth cause of action The pleading is inclusive of all Davis County Respondents as they all participated in violations, conspiracy (two or more people involved) and collusion against Petitioners God-given constitutionally protected rights. Davis County Respondents, even after being informed of the errors, still proceeded to hold Petitioners identity in custody and liable for a false debt without permission which represents an unauthorized taking as they continued to use and search Petitioners identity without permission.

Fifth Cause of Action Petitioner use of the criminal statutes are to show that the Davis County Respondents failed to exercise objective reasonableness in their actions and in so doing committed criminal acts. Petitioner is seeking that the court convene a Grand Jury for the purpose of investigating said crimes and is not seeking civil remedy under those statutes. All Davis County Respondents have participated.

Sixth Cause of Action This cause is for prejudice, bias and discrimination. Yet, Respondents would have this court believe that this is related to a Utah criminal code. This is simply untrue. Respondents acted in a way that is contrary to what the law compelled them to do. This is inclusive of their failure to follow procedure, present evidence, prove jurisdiction and yet proceeded anyway continuing to railroad Petitioner.

Seventh Cause of Action Davis County Respondents failed to intervene critically at times with numerous opportunities to do so when presented with evidence of violations of rights.

Eighth Cause of Action Not only can the Respondents not bring in items outside the four corners of the pleading they have failed to recognize that this administrative court has never had jurisdiction and any conviction is VOID.

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By: Diane Killion-Allen

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Diane Killion-Allen

Ninth Cause of Action – Davis County Respondents have caused an unlawful corporeal hurt by seizing rights as rights are my property as they presented an offer of force by way of railroading.

Tenth Cause of Action – Claims under this cause are valid. Again, this court may not consider anything outside the four corners of this pleading. The justice court was without jurisdiction and participated in gross violations of constitutional rights thus any judgement rendered is VOID.

Eleventh Cause of Action Respondents are vicariously responsible for the tortious conduct of its employees, servants, agents. At all material times, named employees were all acting within the scope of their employment, performing work for their employer at the time of the conduct.

Twelfth Cause of Action Indemnification Claims are made under § 1983 for damages. As previously shown GIAU notice of claim does not apply to 42 § 1983 claims. Petitioner is entitled to relief and redress of grievances under Constitution for the United States as well as Article 1 Section 22 of the Utah Constitution and there is no immunity. Indemnification is for a wrong caused and Petitioner has a right to redress grievances.

6 ARGUMENTS / CLAIMS NOT BARRED

Immunity claims The very notion that these public officials can act egregiously without liability claiming to be above the law is appalling and repugnant to our constitution and to God. As the Declaration of Independence so eloquently stated … "that governments are instituted among men to protect these rights"…and the Constitutions and the Federal Statutes specifically provide for redress of grievance when they do not uphold the people's rights.

Respondents attempt to mislead this Court through the various immunity doctrines and can't seem to make up their mind whether there has been a conviction or an ongoing case. Either way their arguments fail. When in reality it's all smoke and mirrors as they are not entitled to immunity for violations of constitutionally protected rights. Immunity claims are

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unconstitutional. [49]

6.1 ABSOLUTE/QUALIFIED IMMUNITY CLAIMS FAIL

"Qualified immunity shields federal and state officials from money damages unless a Petitioner pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct."[50] Perhaps counsel is blatantly attempting to divert this courts attention, from the very facts that Petitioner plead in her complaint which show that the burden of showing that Respondents are not entitled to qualified immunity has been met. Thus the official, qualified and judicial immunity affirmative defenses do not apply in this case.

Likewise, Respondents swore an oath to uphold and protect the constitutions for the United States and Utah. Their oath is their acknowledgement and acceptance of the contract and Public Trust, which has been violated. Their actions, either willfully or ignorantly, violated the very rights belonging to Petitioner during the sham prosecution which was nothing more than a simulation of legal process as outlined in the complaint.

Time and again, Petitioner raised jurisdictional challenges and lawful objections before the court. Yet, time and again Respondent Ynchausti denied properly filed, unopposed motions without ever providing any findings of fact or conclusions thus, he acted outside of his scope and authority as Petitioner had a right to summary judgement as a matter of law. Additionally, when Respondents Rawlings and Cole failed to make Ynchausti aware of their mistakes, they became complicit in the acts and, as a result, they both denied the Petitioner her full and free access to

[49] See Marbury v. Madison, 5th US (2 Cranch) 137, 180; Nestor v Hershey, 425 F2d 504
[50] *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (citations omitted).

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the enjoyment of her right to summary judgement and her substantive due-process rights through this simulation of a legal process. Only if "their conduct does not violate clearly established statutory or constitutional rights …" are they protected by immunity.[51]

Under the qualified immunity standard, Respondent has met both prongs and the Davis County Respondents qualified immunity defense claims fail. "When federal officials perpetrate constitutional torts, they do so ultra vires and lose the shield of immunity" [52]

Utah Governmental Immunity Act (GIAU)

GIAU is Not applicable to 42 § 1983 claims. Where rights secured by the constitution are involved there can be no rule making or legislation which would abrogate them".[53] "The state has no power to impart to him any immunity for responsibility to the supreme authority of the United States". Scheurer v Rhodes, 416 U.S. 232, 944 S.Ct. 1683, 1687 (1974)

6.3 RES JUDICATA/COLLATERAL ESTOPPEL Davis County Respondents' statement that Petitioner has made Federal and State Claims and requested an Emergency Injunction wherein Petitioner has now been convicted fail for two reasons: first, their collateral attack is based on attacking a state court conviction after the conviction took place. Second, this doctrine assumes the state court had the proper jurisdiction to adjudicate the matter in the first place. Petitioner has Noticed the justice court to Vacate and Seal void orders as the justice court never had jurisdiction "All laws, rules and practices which are repugnant to the constitution are null and void".[54]

Collateral attack is to be permitted when "allowing the judgement to stand would substantially

[51] See Harlow v Fitzgerald 457 U.S. 800 (1982)
[52] Williamson v. U.S. Department of Agriculture 815 F.2d. 369
[53] See Davis v. Wechsler, 268 US 22, 24
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infringe the authority of another tribunal or agency of the government".[55] The United States Supreme Court has itself recognized the inherent equitable powers of a court to modify or otherwise relieve a party from prospective requirements of a final order.[56] "A court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has turned through changing circumstances into an instrument of wrong".[56]

6.5 Davis County Justice Court Subject to Suit

As the Davis County Justice Court is a corporation like any other, they too are subject to suit. As they use private bank script as its currency it sinks to the level of any other incorporated entity, loses its status and becomes subject to the same laws as any other corporation. "When the United States enters into commercial business it abandons its sovereign capacity and is to be treated like any other corporation." 91 CJS United States sec. 4 . They're not the government and they don't have any special government powers when they are operating as commercial corporations. Instead, they are subject to all the same regulations and limitations as any other corporation… including the requirement that they operate lawfully…not "legally", lawfully.

DECLARATORY/ INJUNTIVE RELIEF IS PROPER

As the Respondents actions are in violations of the Supreme law of the land and they have discriminated and retaliated against Petitioner for which the "exercise of a constitutional right cannot be converted into a crime denial of them would be a denial of due process of law" Injunctive relief is proper. Claims are founded on violations of well established, natural, God-Given rights and the violations of them as protected by the Constitutions and well founded laws.

CLAIMS FOR RELIEF

[55] Kalb v Feuerstein, 308 U.S.433, 60 S.Ct. 285, 84 L.Ed.2d. 313 (1940).
[56] U.S. v. Swift Co., 286 U.S. 106, 114-115, 52 S.Ct. 460, 76 L.Ed. 999 (1933)

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Any "unconstitutional act is not law; It confers no rights; It imposes no duties; before it's no protection it creates no office; it is in legal contemplation as inoperative as though it never had been passed." [57] The Anti-injunction Act is unconstitutional. "No state legislator or executive or judicial officer can work against the constitution without violating his undertaking to support it. Individual unlike the corporation cannot be taxed for the privilege of existing corporation is an artificial entity which shows its existence and charter powers to the state but an individual's right to live in on property or natural rights for the enjoyment which an excise cannot be imposed" [58] Petitioner "owes no duty to the State, since he received nothing therefrom, beyond the protection of his life and property"[59]

7 CONCLUSION

Determination by this Court that the Respondents have entered nothing on record by testimony, affidavits, or deposition, and that the rulings and determinations of The United States Supreme Court have precedent over Counsel's opinions justly requires that Respondents motion to dismiss be denied as legally insufficient. This Court is in receipt of judicial notice of the criminal acts of the Respondents and this Court avoids charge of misprision of felony by remanding the Respondents to other authority for a grand jury's determination. As a general rule, the principle of stare decisis directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law"[60]

WHEREFORE, for the reasons stated throughout this opposition, Petitioner respectfully **MOVES** this Honorable court to enter an order **DENYING** Defendant's Motion to Dismiss.

[57] Norton V Shelby County 118 US 425 p.442.
[58] Cooper v Aaron, 358 US 1, 78 S.Ct. 1401 (1958)
[59] Hale v Henkel 201 US 443 at 89
[60] Miller V Gammie, 335 F3d 889 at 900 (9th circuit 2003).

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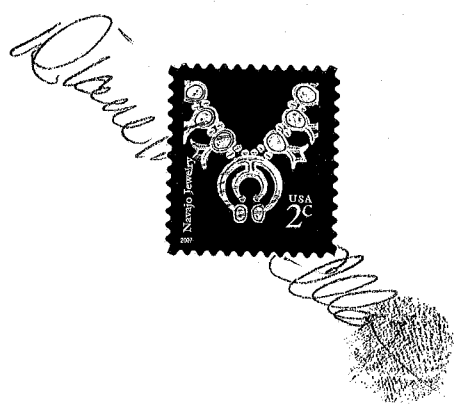

RESPECTFULLY SUBMITTED THIS ____ day of November, 2022.

Diane Killian Allan,

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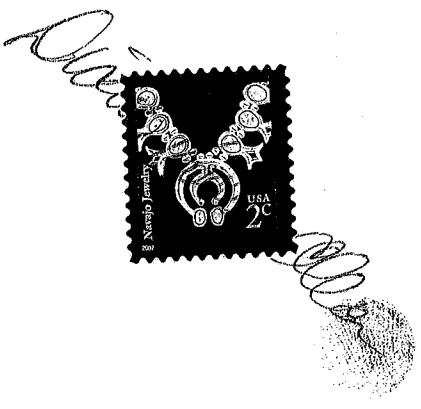

CERTIFICATE OF SERVICE

I hereby certify that on _____, 2022, I delivered the attached document to the Clerks Office by : _____

the following CM/ECF registrants:

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